

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	8:11CR251
)	
v.)	
)	
DEWEY DEAN MILLER,)	MEMORANDUM AND ORDER
)	
Defendant.)	
_____)	

This matter is before the Court pursuant to the Judgment and Mandate of the United States Court of Appeals for the Eighth Circuit (Filing No. [111](#) and Filing No. [112](#)). The Eighth Circuit remanded "the case to the district court for further proceedings on Miller's habeas claim." (Filing No. [111](#) at 1). In accordance with that Judgment, the Court has again reviewed defendant Dewey Dean Miller's ("defendant") filings entered on March 3, 2015 (Filing No. [92](#)) and April 23, 2015 (Filing No. [94](#)). Having fully reviewed the record, the Court will construe Filing No. [92](#) and Filing No. [94](#) as seeking habeas relief under 28 U.S.C. § 2255.

In accordance with the United States Supreme Court's holding in *Castro v. United States*, 540 U.S. 375, 124 S. Ct. 786, 157 L. Ed. 2d 778 (2003), defendant is hereby given notice of the Court's characterization of these filings as petitions seeking relief under habeas corpus. The Court will therefore provide

defendant "an opportunity to withdraw the motion or amend it so that it contains all the § 2255 claims he believes he has."

Castro, 540 U.S. at 383. The Court also advises defendant that if he chooses not to withdraw his motion, any subsequent motions collaterally attacking his sentence will be subject to the limitations placed on "second or successive" motions under 28 U.S.C. § 2255(h). Finally, the Court advises defendant that he may amend his motion to include other claims he believes undermine the validity of his sentence so that all claims will not be subject to the restrictions on "second or successive" motions that will apply if they are filed separately at a later date. Accordingly,

IT IS ORDERED:

1) The Court will file an order addressing defendant's Memorandum in Support of Application for Writ of Habeas Corpus Postconviction Relief (Filing No. [92](#)) as a motion under 28 U.S.C. § 2255 and Motion For Authorization to File a Second Successive 2255 (Filing No. [94](#)) as an amendment to Filing No. [92](#) under 28 U.S.C. § 2255, unless the defendant withdraws the motion(s) on or before November 4, 2015.

2) No later than November 4, 2015, the defendant may file any additional amendments adding additional claims to be considered as part of the 28 U.S.C. § 2255 motion.

DATED this 20th day of October, 2015.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court